

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 730 of 1997

in

SPECIAL CIVIL APPLICATION No 1366 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? NO

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
No

5. Whether it is to be circulated to the Civil Judge?
No

PRITHVIRAJ SINGH ASSISTANT ENGINEER (CIVIL)

Versus

STATE OF GUJARAT

Appearance:

MR YN OZA for Appellant

Mr.S.R.Divetia, ASSTT. GOVT. PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE K.G.BALAKRISHNAN and
MR.JUSTICE A.K.TRIVEDI

Date of decision: 28/01/98

ORAL JUDGEMENT (Per K.G.Balakrishnan,J.)

This appeal is directed against the judgment of the learned Single Judge in Special Civil Application No.1366 of 1986. The appellant was working as Assistant Engineer (Civil) in the Irrigation Department of the Gujarat State. On 22-4-1985, he tendered a resignation letter to the Superintending Engineer for being forwarded to the Government. In anticipation of the acceptance of the resignation, he relinquished the charge on 29-4-1985. On 26-7-1985, wisdom dawned on him and he submitted an application requesting for withdrawal of his resignation letter submitted on 22-4-1985. This letter was also submitted to his next superior Officer namely, the Superintending Engineer and the Superintending Engineer, in turn, forwarded the letter to the Chief Engineer and he permitted the appellant to join duty. The Superintending Engineer made submission to the higher authorities that the absence of the appellant from duty for the period from 29-4-1985 to July 1985 be treated as leave for unauthorised absence. It appears that on 10th October 1985, the Government issued an order, first paragraph of which reads as under:

"With reference to your letter No.KNV-Ec-1-2006 dated 31-7-85 on the above subject it is to be informed that your proposal to accept the request made by Shree P.R.Singh Assistant Engineer (C) by his application dated 26-7-85 to permit him to withdraw his resignation has been accepted by the Government."

In that letter, it is also stated that the Superintending Engineer shall take disciplinary action against the appellant for his unauthorised absence as provided under Sec.33-A(4) of Bombay Civil Service Rules (hereinafter referred to as "BCSR"). The Superintending Engineer was also informed that it was not within his competence to permit the appellant to join duty and that, that action was improper from the administrative point of view.

2. The appellant, thereafter, continued to be in service and while so, he received an order dated 3-3-1986 intimating him that his resignation was accepted. Then the appellant filed Special Civil Application challenging the order dated 3-3-1986 whereby his resignation was accepted.

3. The learned Single Judge dismissed the Special Civil Application on the ground that the resignation tendered by the appellant was deemed to have been accepted, in view of second part of Rule 33-A(2) of BCSR.

It was held that once resignation has become effective, the claim of the appellant that he was entitled to continue in service cannot be accepted. This finding of the learned Single Judge is challenged before us by way of this appeal.

4. We heard Shri Y.N.Oza, learned Advocate for the appellant and Shri S.R.Divetia, learned Assistant Government Pleader for the respondents.

5. The appellant contended that the resignation tendered by the appellant was not accepted by the respondents, whereas, the request made by the appellant to withdraw the resignation was accepted and an order to that effect was passed on 10th October 1985 and under the circumstances, the Government was not justified in passing an order on 3-3-1986 accepting the resignation. The learned Assistant Govt. Pleader submitted that, by virtue of Rule 33-A(2), the resignation tendered by the appellant was given effect to and therefore, the appellant was not entitled to withdraw the resignation. The learned Asst. Government Pleader also placed reliance on sub-Rule 5 of Rule 33, wherein it is stated that notice of resignation shall not be permitted to be withdrawn after the resignation has become effective.

6. The appellant submitted the resignation and the Government did not pass any order accepting that resignation within reasonable time. The question is, whether the deeming provision under Sec.33-A(2) had any operative effect. Section 33-A(2) is to the following effect:

"The resignation tendered by a Government servant shall be effective from the date on which it is accepted by the appointing authority; but if it is not accepted before the expiry of the period of notice for resignation to be given by such servant under sub-rule (1) it shall be deemed to have become effective on the date of the expiry of such period, unless the Government servant is informed, before such date, that his resignation has been rejected and of the reasons for such rejection."

It is true that the Government did not issue any order rejecting the resignation within one month. Under such circumstance, the resignation submitted by the employee could be deemed to have become effective. But that is only a deeming provision and the authorities can well within their power take a contrary view and that is what

has been done in this case. By order dated 10th October 1985, the superior Officer of the appellant was informed that the request of the appellant to withdraw his resignation was accepted by the Government. There seems to have been some Government proceedings by which the letter of request of the appellant to withdraw the resignation was accepted. But these proceedings are not placed before us. However, the statement made in the order dated 10th October 1985 is not disputed before us. Pursuant to the letter dated 10th October 1985, the Superintending Engineer also passed a consequential order and therein also, it was stated that the period between 29-4-1985 to July 1985 will be treated as unauthorised absence and action will be taken as per Rule. The conduct of the parties lead us to believe that the resignation was not accepted by the Government. The impugned order is to be appreciated in the background of these circumstances. The appellant was allowed to join duty and he was informed on 10-10-1985 that his request for withdrawal of the resignation was accepted and he continued in service till the impugned order. In the facts and circumstances of the case, we are inclined to accept the contention of the appellant that the resignation tendered by the appellant was permitted to be withdrawn and the deeming provision under Rule 33-A(2) had not become effective. The learned Single Judge was not justified in taking the view that the resignation had become effective and therefore, the appellant was not entitled to continue in service.

7. In the result, we set aside the order passed by the Government on 3-3-1986 whereby the appellant was treated as having been resigned from the post of Assistant Engineer (Civil) and the respondents are directed to allow the appellant to continue in service. We are told that the service of the appellant has been terminated on 14-7-1997. The respondents are further directed to permit the appellant to join duty on or before 10-2-1998. The appeal is allowed with no order as to costs. No order on C.A.
